IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1102 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PATEL CHANDU POPAT

Appearance:

1. Criminal Appeal No. 1102 of 1986

MR PRACHCHHAK, APP, for Petitioner No. 1

MR BJ JADEJA for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The State of Gujarat has filed this Appeal against the Judgment and order of acquittal dated 28.5.1986, passed by the learned Sessions Judge, Jamnagar in Sessions Case No.56 of 1984, whereby he acquitted all the four respondents - accused for the offences u/ss. 302 read with 34 I.P.Code and Section 135(1) of the Bombay Police Act.

2. As per the prosecution case the incident in question took place on 6.4.1984 between 7.00 to 7.15 pm at village Mudila of Taluka Kalavad, the accused respondents No.1 & 2, having iron pipe and accused respondents No.3 & 4 having sticks with them, had common intention to commit murder of deceased Ghela Shiva, father of complainant Mohan Ghela, and in furtherance of their common intention by causing injuries with the iron pipes and sticks they committed murder of deceased Ghela Shiva. The complaint was lodged, on the next day, about the incident by the complainant Mohan Ghela, son of deceased Ghela Shiva. As per the case of the complainant, in his complaint, about 2 to 2-1/2 months prior to the incident some altercation took place with accused respondents No.1 & 2 Chandu Popat and Lakhu Popat, respectively for removing the fence which was coming in their way. At that time both the accused - respondents threatened his father Ghela Shiva with dire consequences. This was reported to the leaders of the village. At the instance of Shri Hemantsinh @ Batukbha Dadbha Jadeja, Sarpanch and leader of the village and Shivubha Takhatsinh, the respondents accused removed the fence and clear the way and the matter was compromised. Therefore, they had not lodged the complaint about the theft anywhere else. However, the accused had kept this in their mind and they were waiting for an opportunity.

3. On 6.4.1984 in the morning, father of the complainant, Ghela Shiva had gone to his Vadi for agricultural work. The complainant and his younger brother Jayanti had also gone to the field and for the whole day they stayed over at their field. In the evening at about 7.00 pm his father left for village from Vadi with their cattle, but both the brother stayed at their Vadi. Thereafter, after 10 to 15 minutes at a distance of 1-1/2 fields from Vadi they heard shouts, thereupon the complainant and his brother went running towards their site. On the way they saw accused Chandu Popat and Lakhu Popat beating his father with iron pipes

and accused Parsottam Ruda and Bhagat Lakha were beating with sticks on his legs and hands and his father was raising shouts. At that time the complainant challenged all 4 of them, thereupon all of them ran away from the place by leaving his father there. At that time Darbar Pravinsinh Danubha, whose field was nearby their vadi, also came running so as his younger brother Jayanti also came running. They saw his father Ghela Shiva in a bleeding condition. Both his hands and his legs were broken. The complainant asked his father, what happened? Thereupon, his father told him that when he was going with his cattle all the four accused were standing on the road and without uttering a word they straightway started beating him. Accused Chandu Popat and Lakhu Popat had iron pipes with them whereas accused Parsottam Ruda and Magan Lakha had sticks, and all of them started beating him with iron pipes and sticks which were in their hands and broke his both hands as well as legs. By saying so the deceased became unconscious. Thereafter, his brother brought bullock cart in which his father was removed to their house. Thereafter, his father was brought to Kalavad Government Hospital in Metador of Darbar Jathubha Dadbha of his village. Doctor examined his father and declared him death.

However, the investigation in the case was started on the telephone worthy received from the Medical Officer Shri Kanani on 6.4.1984 at 11.50 pm by PSI Shri Gohil. As per telephone worthy deceased Ghela Shiva received injuries in the "Maramari". Thereafter, his son Mohan Ghela came to the Police Station and lodged the complaint u/s.302 I.P.Code. After completing the investigation the Police filed charge-sheet against all the respondents-accused for the aforesaid offences. They were tried before the learned Sessions Judge, for the said offences.

4. The prosecution had examined (i) complainant Mohan Ghela as an eye witness, and (ii) Pravinsinh Danubha. The learned Judge, after considering their evidence, came to the conclusion that their evidence was not at all reliable and except their evidence there was no other evidence to connect the respondents - accused with the guilt and, therefore, by giving benefit of doubt the learned Judge acquitted all the respondents - accused for the offences for which they were charged. This is under challenge in this Appeal.

5. Learned APP Shri Prachchhak vehemently submitted that the learned Judge committed grave error in not relying on the evidence of two eye witnesses. He

submitted that complainant Mohan Ghela was the son of deceased Ghela Shiva, but only because of that his evidence cannot be discarded. He submitted that at the most his evidence should be carefully scrutinized by the Court while appreciating it. It is true that merely because he is closely related to the deceased, therefore, only on that ground his evidence cannot be discarded, but from certain admissions made by this complainant Mohan Ghela, we are of the clear opinion that the learned Judge has rightly discarded his evidence on the ground that he could not have witnessed the real incident. From his evidence it is clear that the motive is not at all established in this case. The prior incident took place about 2 or 2-1/2 months before the incident was already compromised between the parties at the instance of the leaders of the village and fence was removed by the accused. Therefore, we are not prepared to believe that by keeping this in their mind they took their revenge and killed deceased Ghela Shiva on 6.4.1984. The incident in question took place at about 7.00 pm and as per the evidence of this witness Mohan Ghela, the complainant, as well as his brother and his father had gone to their Vadi early in the morning and all of them stayed over whole day and in the evening his father left with cattle. If that is so, it is difficult to believe that all the respondents - accused were knowing that deceased would pass through that place at 7.00 or 7.15 pm. Secondly, as per the say of the complainant he heard the shouts after 10 to 15 minutes after his father left with cattle, meaning thereby his father must have travelled some distance from their Vadi. Therefore, we are not prepared to believe that he must have heard the shouts from such a long distance. Even assuming for the sake of argument that in the village one can hear the shouts even from a long distance then also the complainant would take at least some time to reach the place of incident. Looking to the injuries received by the deceased we are not prepared to believe that the incident must have continued for 10 to 15 minutes. We are also not prepared to believe his evidence that the deceased made Dying declaration before becoming unconscious. The delay in lodging the FIR in this case is fatal because the distance from the place of incident and the Police station was not much. It is pertinent to note that his younger brother Jayanti, though cited as witness, was not examined by the prosecution for the reasons best known to them. Considering all these aspects we are not prepared to place any reliance on the evidence of so called eye witness complainant Mohan Ghela, more particularly when the learned Judge has refused to place any reliance on his evidence.

6. The prosecution has examined another witness Pravinsinh Danubha as an eye witness, whose field is near to the place of incident. According to him, on the day of incident, he had gone to the field of Gambhirsinh Nathubha for doing the work and after completing the work he was returning at 7.00 pm to his field. At that time he heard shouts and then he saw all the four accused persons standing there. They were armed with iron pipe and sticks and beating deceased Ghela Shiva and then ran away towards northern side. However, from his cross examination it has become clear that no standing crop was there in his field. There was no house in his field. Therefore, he had no reason to be there at his field at such an odd hours at 7.00 pm. It has been alleged that the dispute regarding shedha was going on between him and accused Lakhu Popat. Above that, the learned Judge, who had an opportunity to mark the demeanour of the witness, found that the witness had come to the Court also putting at Goggles, as he had only one Eye. Therefore, at about 7.00 to 7.15 pm, with the help of Goggles, he would not be in a position to see anything or witnessed the incident. He had admitted in his cross Examination that complainant Mohan Ghela came to the place of incident after him and asked his father, what happened ? If the complainant had witnessed the incident then where was the question of asking his father, what happened ? When the learned Judge observed in Para : 13 of his Judgment that this witness Pravinsinh had only one eye and his eye sight was weak then it would be very much doubtful as to whether this witness had actually witnessed the incident at 7.00 or 7.15 pm.

7. On the aforesaid ground if the learned Judge has refused to place any reliance on the evidence of these two eye witnesses then in absence of any reliable evidence we are not prepared to interfere with the order of acquittal, that too, after a period of almost 20 years.

8. In view of the above discussion, we do not see any substance or merit in this Appeal. Accordingly, this Appeal fail and is hereby dismissed.

(B.J.Shethna, J.)
Date : March 11, 2004
(J. R. Vora, J.)
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